RECEIVED

JUN 17 2013

ROBERT B. KUGLER
U.S. DISTRICT JUDGE

UNITED STATES DISTRICT COURT

for the

District of New Jersey

Mohamad Ibrahim Shnewer *Petitioner* (the name under which you were convicted)	Prisoner No:	61283-066
v.	Case Number:	(To be supplied by Clerk's Office)
United States of America *Respondent* (authorized person having custody of Petitioner)	Place of Confinement:	U.S.P. Marion

MOTION UNDER 28 U.S.C. § 2255
TO VACATE, SET ASIDE, OR CORRECT SENTENCE
BY A PERSON IN FEDERAL CUSTODY

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

U.S. District Court for the District of New Jersey

(b) Criminal docket or case number: 07-459

2. (a) Date of the judgment of conviction: December 22, 2008

(b) Date of sentencing: April 29, 2009

3. Length of sentence: Life

4. Nature of crime (all counts): Conspiracy to Murder Members of the United States Military, Title 18 U.S.C. § 1117 (1114)

5. (a) What was your plea?

(1) Not guilty ☒ (2) Guilty ☐ (3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment and a not guilty plea to another count or indictment, to which counts did you plead guilty and to which did you plead not guilty?

N/A

6. If you went to trial, what kind of trial did you have? Jury ☒ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☐

8. Did you appeal from the judgment of conviction? Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: U.S. Court of Appeals for the Third Circuit

(b) Docket or case number: 09-2299

(c) Result: The Court vacated my conviction on Count 4, Attempted Possession of Firearms, and affirmed in all other respects.

(d) Date of result: Dec. 28, 2011

(e) Citation to the case: U.S. v. Duka, 671 F3d 329 (3d Cir. 2011)

(f) Grounds raised:

I. FISA is unconstitutional

II. Defendant was denied the right to a fair trial when evidence of violent jihadist videos were admitted

III. The government committed prosecutorial misconduct when it constructively amended the indictment

IV. The government's summation improperly commented on the defendant's failure to testify

V. There was insufficient evidence to convict the defendant of attempted possession of firearms

(g) Did you file a petition for certiorari in the United States Supreme Court?
Yes ☒ No ☐

If YES, answer the following:

(1) Docket or case number: No. 11-10235

(2) Result: Petition for writ of certiorari denied.

(3) Date of result: June 11, 2012

(4) Citation to the case: U.S. v. Tatar, 183 L. Ed. 2d 616 (2012)

(5) Grounds raised:

1. Whether FISA is unconsitutional because it violates the Fourth Amendment.
2. Whether the U.S.S.G. § 3A1.4 enhancement is unconstitutionally arbitrary and irrational.
3. The Court should define "official victim" as used in U.S.S.G. § 3A1.2, and address whether the guideline causes double counting.
4. Whether the indictment was constructively amended.

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court? Yes ☐ No ☒

11. If your answer to Question 10 was YES, give the following information: N/A

(a) (1) Name of court:

(2) Docket or case number:

(3) Date of filing:

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result:

(8) Date of result:

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court:

(2) Docket of case number:

(3) Date of filing:

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ❐ No ❐

(7) Result:

(8) Date of result:

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ❐ No ❐

(2) Second petition: Yes ❐ No ❐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. **TIMELINESS OF MOTION**: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations contained in 28 U.S.C. § 2255 does not bar your motion.[1] N/A

13. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. **State only the facts supporting each ground - do not argue or cite law.**

1. The sentencing court did not give rational and meaningful consideration to one of the § 3553(a) factors, namely, the need to avoid unwarranted sentencing disparity, and Movant's attorney was ineffective in failing to properly address this factor at sentencing or object to the court's failure to address it.

2. The sentencing court based its sentence of Movant in part on a constitutionally impermissible factor, Movant's religious beliefs, and his attorney was ineffective in failing to object or raise the issue in direct appeal.

3. Trial counsel was ineffective in failing to communicate a plea offer to Movant, or, if there was no formal plea offer, counsel was ineffective in failing to pursue plea discussions with the prosecution when he learned prosecutors were amenable to such discussions.

4. Movant wishes to join in the claims of his codefendant's § 2255 motions, and incorporates them by reference.

---

[1] The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") contained in 28 U.S.C. § 2255(f), provides in part that: A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

(1) the date on which the judgment of conviction became final;
(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

GROUND ONE:

(a) **Supporting facts:** Movant's attorney was ineffective in failing to object when the sentencing court's treatment of the need to avoid unwarranted sentencing disparities was limited to the statement: "The sentence disparity is not really an issue in this case," resulting in a procedurally unreasonable sentence. Even if the Court's consideration of this factor was sufficiently meaningful, Movant's attorney was ineffective in failing to adduce examples of other defendants convicted at trial of the same offense as Movant, but who were sentenced below the guidelines to less than life in prison, e.g., the defendants in United States v. Amawi, No. 3:06cr719 (N.D. Ohio), United States v. Al Ghazi, No. S3 07cr354 (S.D.N.Y.), United States v. Bout, No. 08cr365 (S.D.N.Y.), and United States v. Sherifi, No. 5:09cr216-FL-2 (E.D.N.C.). But for this error, Movant's sentence would likely have been less than life in prison.

(b) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?
Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Ineffective assistance of counsel.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?
Yes ☐ No ☒

(2) If your answer to Question (c)(1) is YES, state: N/A

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number:

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?
Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?
Yes ☐ No ☐

(5) If your answer to Question (c)(4) is YES, did you raise the issue in the appeal?
Yes ☐ No ☐

(6) If your answer to Question (c)(4) is YES, state:

Name and location of the court where the appeal was filed:

Docket or case number:

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is NO, explain why you did not appeal or raise this issue:

GROUND TWO:

(a) **Supporting facts:** At the sentencing hearing of Movant's codefendant Serdar Tatar, the judge stated that he was imposing a sentence on Tatar of less than the life sentence imposed on Movant because Tatar "invoke[d] the name of the lord only once" in intercepted conversations. The judge further stated that as to Tatar's religiosity, "I'm not impressed with it. I know a lot of people who invoke the name of their God." According to the judge, "that makes a difference. It makes a big difference...Accordingly, I'm not goig to give [Tatar] a life sentence."

Movant's attorney was present for Tatar's sentencing and reviewed the transcript. Counsel should have lodged an objection in the distict court to the judge's reliance on the constitutionally impermissible factor of Movant's religious beliefs and his reliance on his personal experience. Counsel should also have raised this meritorious issue on direct appeal.

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?
Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Ineffective assistance of counsel.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?
Yes ☐ No ☒

(2) If your answer to Question (c)(1) is YES, state: N/A

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number:

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?
Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?
Yes ❐ No ❐

(5) If your answer to Question (c)(4) is YES, did you raise the issue in the appeal?
Yes ❐ No ❐

(6) If your answer to Question (c)(4) is YES, state:

Name and location of the court where the appeal was filed:

Docket or case number:

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is NO, explain why you did not appeal or raise this issue:

GROUND THREE:

(a) **Supporting facts:** In pre-trial communication with Movant's attorney, prosecutors raised the possibility of a guilty plea by Movant. Counel never pursued this issue with the government, nor did he communicate the option to Movant. If Movant had been aware that the government would have accepted a guilty plea that would have potentially resulted in less than a life sentence, Movant would have pleaded guilty. If the instant motion is granted and such a plea is offered, Movant will plead guilty.

(b) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?
Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Ineffective assistance of counsel.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?
Yes ☐ No ☒

(2) If your answer to Question (c)(1) is YES, state: N/A

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number:

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?
Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?
Yes ❐ No ❐

(5) If your answer to Question (c)(4) is YES, did you raise the issue in the appeal?
Yes ❐ No ❐

(6) If your answer to Question (c)(4) is YES, state:

Name and location of the court where the appeal was filed:

Docket or case number:

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is NO, explain why you did not appeal or raise this issue:

GROUND FOUR:

(a) **Supporting facts:** Please see the forthcoming Memorandum of Law joining the § 2255 claims of Movant's codefendants and explaining their application to Movant.

(b) **Direct Appeal of Ground Four:** N/A

(1) If you appealed from the judgment of conviction, did you raise this issue?
Yes ❐ No ❐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?
Yes ❐ No ❐

(2) If your answer to Question (c)(1) is YES, state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number:

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?
Yes ❐ No ❐

(4) Did you appeal from the denial of your motion, petition, or application?
Yes ❐ No ❐

(5) If your answer to Question (c)(4) is YES, did you raise the issue in the appeal?
Yes ❐ No ❐

(6) If your answer to Question (c)(4) is YES, state:

Name and location of the court where the appeal was filed:

Docket or case number:

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is NO, explain why you did not appeal or raise this issue:

14. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

None of the grounds raised in this motion have been previously presented in any federal court. The reason for this is that counsel was ineffective in failing to raise them.

15. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ❐ No ☒

If YES, state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. N/A

16. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing:

(b) At the arraignment and plea:

(c) At the trial:

(d) At sentencing:

(e) On appeal:

(f) In any post-conviction proceeding:

(g) On appeal from any ruling against you in a post-conviction proceeding:

17. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

18. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

In light of the foregoing, the movant asks the Court to grant the following relief:

Vacate or correct Defendant's sentence.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 6/7/2013.
(month, date, year)

Signed on: 6/7/2013
(date)

[signature]
Signature of Petitioner

U.S.P. Marion Box 1000
Street Address

Mohamad Ibrahim Shnewer
Printed Name

Marion, IL 62959
City, State, Zip

N/A
Signature of Attorney (if any)

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

N/A